



September 17, 2021

Emailed to: regulations@dfpi.ca.gov and copy to David Bae at [REDACTED]@dfpi.ca.gov.

Subject line: PRO 03-21

Dear [Commissioner Gonzales]:

The Online Lenders Alliance (OLA) represents the online lending industry and companies that provide services to those online lenders. We appreciate the invitation to provide comments on rulemaking under the CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW: CONSUMER COMPLAINTS (PRO 03-21).

The Department seeks input from interested parties on draft language implementing section 90008, subdivisions (a), (b), and (d) of the CCFPL. OLA's general comments are respectfully set forth below. OLA thinks that detailed comments regarding the processes and procedures are premature until the overall requirements regarding "complaints" and "inquiries" are addressed.

I. Definition of "Complaint" and "Inquiry"

The proposed rules define a "complaint" as follows:

An expression of dissatisfaction from a complainant regarding a financial product or service, a covered person, or a service provider. (emphasis added).

This definition of a "complaint" is so vague and broad that no covered person could ever know what may or may not constitute a complaint and could be interpreted in such a manner as to encompass most consumer communications. Given the proposed recording and reporting requirements of such "complaints," this definition would create an extremely time-consuming and resource draining task, if not altogether an impossible task. OLA recommends that the definition of "complaint" be much more limited to only cover communications from consumer regarding suspicion of unlawful conduct with respect to the financial product offered by the covered entity. Limiting the definition in this manner would not only be reasonable but more effective in addressing the DFPI's regulatory oversight.

The proposed rules define an "Inquiry" as follows:

A question or request for information, interpretation, or clarification about a financial product or service, a covered person, or a service provider.

“Inquiry” should only be defined to provide guidance to a covered person to differentiate an “inquiry” from a “complaint.” There should be no obligations on a covered person as to an inquiry. Whether, when, and how a business responds to a consumer inquiry (i.e. information, interpretation, or clarification about a financial product) should only be a matter of customer service and competition within the marketplace. The processes and procedures proposed by the DFPI as to inquiries would literally require every covered person to record, obtain information about, categorize, respond to, and report to the DFPI on every consumer communication. The sheer volume and complexity would be overwhelming to any covered person as well as the DFPI. The detailed information the DFPI is proposing that covered persons obtain about an “inquiry” creates unnecessary privacy and data security issues for California consumers. The timing requirements for responses would be impossible for many, if not all, covered persons to meet. As indicated, responding to consumer inquiries are part of customer service which should not be within the purview of the DFPI. It is unclear what regulatory value obtaining the “inquiry” information would even provide the DFPI.

II. Proposed Complaint Processes and Procedures

The proposed complaint processes and procedures are generally too complex, impractical, vague, unduly burdensome, and in many respects completely unnecessary.¹ Almost all the proposed processes and procedures need clarity and/or should be limited in timing and scope.

A. Complaint process and timelines

The complaint form needs lots of clarifications including but not limited to by whom and how the form is to be completed in certain scenarios. Requiring covered persons to track complaints through numerous vehicles (mail, email, and phone) will be extremely complicated and burdensome especially for online providers. Much of the information required to be retained and reported about “complaints” is unnecessary, not useful to the DFPI’s regulatory authority, and is unclear as to how it would need to be categorized. The various timing requirements are impractical, unreasonable, and lack clarity.

As it currently stands, the extremely short deadlines for sending acknowledgements (0-5 calendar days depending on if received by phone, email, or mail) and final decisions (15 calendar days) are impractical. The timeline for sending acknowledgements might be reasonable except when the complaint is received by mail. With so many people working remotely, it would be extremely challenging, if not impossible, for companies to meet this deadline, especially when the acknowledgement has to be sent back by regular mail. Additionally, the final decision timeline is also unreasonable. 15-calendar days does not allow time for receiving the complaint, tracking all the necessary fields, investigating the complaint, which could require substantive time if there is any sort of systematic issue, determining what the appropriate resolution is, and drafting a final response.

¹ As indicated herein, OLA recommends that there be no rules requiring the retention, responding to, and reporting of an “inquiry.” Therefore, there should be no “inquiry” processes and procedure requirements at all.

Moreover, the provision stating that "any complaint involving a claim of financial hardship must be expedited with a final decision sent 7 calendar days after receiving the complaint" is entirely impractical. All of these deadlines should be in business days and not calendar days. The requirement to expedite this in such short notice would cause administrative nightmares because of the backlog of complaints that also need to be answered within the 15-day time period. The processes and procedures are also not consistent with any other state or federal requirements.

B. Oversight, tracking, and reporting

The number of data points and information to track and categorize are overwhelming, unnecessary, and not useful to the DFPI's regulatory authority.

C. Record Keeping

Requiring a covered person to maintain these records for five (5) years is unnecessary and unduly burdensome. It is also not consistent with existing record retention requirements.

D. Inquiries Procedure

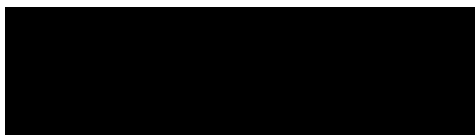
As mentioned, there should be no requirements for covered person with respect to an "inquiry." This should be a matter of customer service and competition in the marketplace. We are not aware of any similar regulatory requirement at either the state or federal level.

E. DFPI Requests

This proposed process with respect to "complaints" needs clarity and the timing requirements need to be lengthened. As discussed, there should be no requirements on covered persons with respect to an "inquiry."

We look forward to further engaging and working with the DFPI to promulgate reasonable and cautious rules that are consistent with the CCFPL, other applicable laws, as well a competitive marketplace.

Thank you very much for your consideration,



Andrew Duke
Executive Director
Online Lenders Alliance